



**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
15 AUGUST 2016**

MEMBERS UPDATE

AGENDA ITEM 6

Application Number	FUL/MAL/16/00445
Location	Land Adjacent Whispering Trees, Mayland Green, Mayland
Proposal	Construction of a one bedroom bungalow
Applicant	Miss Tessa Ford
Agent	Mr Matthew Letten - Spectrum Town Planning Consultants
Target Decision Date	12 September 2016
Case Officer	Kara Elliott
Parish	MAYLAND
Reason for Referral to the Committee / Council	Previous Committee Decision

5.4 Access, Parking and Highway Safety

- 5.4.3 Access is proposed to be taken from Mayland Green. It is considered that there is sufficient means to provide a safe access to the application site, subject to providing a dropped kerb and visibility splays. Furthermore, the Highway Authority has not objected to the scheme. The scheme is therefore considered to accord with adopted policies T2 and T8 and policy T2 of the emerging Local Development Plan.

5.6 Flood Risk

- 5.6.1 The site lies within Flood Zones 1, 2 and 3. 3 being the highest risk flood zone. The proposal is for one dwelling. The site, measuring approximately 0.1 hectare comprises an area of land associated with the donor property, Whispering Trees.
- 5.6.2 New dwellings and residential uses are considered as being more vulnerable based on the Flood Risk Vulnerability Classification and requires the Exception Test to be applied in addition to the Sequential Test, as confirmed by the Environment Agency.
- 5.6.3 In accordance with the National Planning Policy Framework (which supersedes yet embodies the previous principles of flood risk set out in Planning Policy Statement 25: Development and Flood Risk), the application should pass both the sequential and exceptional tests as set out by the guidance.
- 5.6.4 The Sequential Test seeks to steer new development to areas at the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably

available appropriate sites in an area with a lower risk. The availability of such land, in accordance with the NPPF should be provided in the minimum of a “5 year land supply”. The Council can now demonstrate a five year housing land supply since publication of the latest report in July 2015 and therefore this site is not needed for development at this current time, as the LDP allocates strategic sites for development on areas within the lowest probability of flooding and therefore these sites are available for development. The LDP allocated sites were Sequentially Tested during the LDP preparation.

- 5.6.5 Whilst the site is occupied by a single dwelling (Whispering Trees), the proposal seeks to intensify the site by doubling the number of residential units within the former curtilage of the host dwelling. On this basis an objection to the development is raised in respect of the failure of the Sequential Test and the as a result of intensification of the site for residential purposes.
- 5.6.6 For these reasons the site is considered to fail the Sequential Test. Paragraph 102 of the NPPF sets out that if it is not possible, or consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied. In this instance, it is considered that it is possible and consistent with wider sustainability objectives for residential development to be located in zones with a lower probability of flooding and the proposal is considered to fail the Sequential Test.
- 5.6.7 In respect of the Exception Test, paragraph 102 sets out that it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. Both elements of the test will have to be passed for development to be allocated or permitted.
- 5.6.8 A site-specific flood risk assessment has been submitted to accompany the planning application. However, due to the inclusion of plans for a previous application and a statement within the assessment which states residents should occupy the first floor for refuge, it is evident that the flood risk assessment was for the previous application. The flood risk assessment does not consider why the development cannot be located elsewhere. As stated above, the Council can demonstrate five years’ worth of housing land supply since publication of the latest report in July 2015 and therefore this site is not needed for residential development at this current time. Furthermore, there are no sustainability benefits in terms of bringing an existing site back into use as the land is not a site which is empty of a use. Therefore there are no wider sustainability benefits to the community resulting from the development that outweigh the harmful flood risk.
- 5.6.9 The site-specific flood risk assessment sets out that the finish floor level of the ground floor will be set at 5.88AOD, with safe refuge in first floor. However, there is no first floor. The proposed residential use is considered as being more vulnerable based on the Flood Risk Vulnerability Classification and it is not considered that the proposed development will be safe for its lifetime taking account of the vulnerability of its users and the lack of a refuge area.

- 5.6.10 The proposed development is not considered to satisfy the Exception Test as the wider sustainability benefits to the community are not considered to outweigh the flood risk and because it is not considered that that the proposed development will be safe for its lifetime taking account of the vulnerability of its users and the lack of safe refuge is not considered to be a sufficient arrangement. Furthermore, the Council can demonstrate a five year housing land supply and this site is not needed for residential development at this current time as the LDP allocates strategic sites for development on areas within the lowest probability of flooding.

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Mayland Parish Council	<p>Object. Reasons:</p> <ul style="list-style-type: none"> - <i>Inclusion of the brook as amenity space is contrived;</i> - <i>Such a property would detract from the architecturally designed Whispering Trees property</i> - <i>The building would cause over development of the site</i> - <i>There would be possible overshadowing of the light to Whispering Trees</i> 	Noted

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Essex County Council Highways	No objection, subject to conditions	Section 5.4
Environment Agency	No objection. However, the consultation response highlights matters for the Council's consideration outside the remit of the Environment Agency i.e. Sequential and Exceptions test.	Section 5.6

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection	<i>Noted</i>
Emergency Planner	As the conversion lies within flood zone 3 I would need to see a flood water evacuation plan for the site before I could make comment in relation to Emergency Planning.	Section 5.6

7.4 Representations received from Interested Parties

7.4.1 Letters were received **objecting** to the application from the following and the reasons for objection are summarised as set out in the table below:

- T A Mullay, 7 Mayland Green;
- Ann & Robert Rogers, Cedar House, 2 Nipsells Chase;
- Paul Rutter, 6 Mayland Green;

Objection Comment	Officer Response
<p>Encroaching onto land not under ownership; plot is of such a small size which would mean an overdevelopment; located much too close to the neighbouring building (Whispering Trees);</p> <p>Not in keeping with the aims for the development of the village and would not in any way enhance the street scene;</p> <p>flood risk due to the close proximity of Mayland Brook and access to the brook for maintenance purposes could be impeded;</p> <p>Narrow road may cause issues with large vehicles;</p> <p>would lead to more street parking;</p> <p>concerns with foul drainage;</p> <p>this residence is extremely small and cramped and certainly does not appear to be fit for purpose as a permanent dwelling;</p> <p>Flood risk concerns;</p> <p>Boundary fence taken down to appear spacious;</p> <p>Fears if granted, a second floor would be added later on.</p>	<ul style="list-style-type: none"> - Material considerations discussed within main body of report. - Ownership issues resolved and correct Ownership Certificates have been served.

7.4.2 Letters were received **commenting** on the application from the following, summarised as set out in the table below:

- Owen Finnegan, 2 Whitefield Court, Mayland Green

Comment	Officer Response
No objection	Noted

8. **REASONS FOR REFUSAL**

Additional reason for refusal;

2. The proposed development is located within Flood Zone 3 which seeks to direct and intensify residential development, classified as “more vulnerable” as per the Flood Risk Vulnerability Classification, in an area with a high probability of flooding contrary to paragraphs 101 and 102 of the National Planning Policy Framework and the aspirations of the Maldon District Replacement Local Plan and submitted Maldon District Local Development Plan. Furthermore, the proposal is considered to fail both the Sequential Test and the Exception Test given that the Council can demonstrate a five year housing land supply on sites which have been subject of Sequential Testing; the wider sustainability benefits to the community do not outweigh the flood risk posed and because it is not considered that that the proposed development will be safe for its lifetime taking account of the vulnerability of its users and the absence of a flood evacuation plan and safe refuge.